

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION  
OPIATE LITIGATION**

) **CASE NO. 1:17-MD-2804**  
)  
) **JUDGE DAN A. POLSTER**  
)  
) **SPECIAL MASTER DAVID COHEN**  
)  
) **MOTION TO DE-DESIGNATE**  
) **SUSPICIOUS ORDER REPORTS**  
)  
) **FILED ON BEHALF OF THE W.P.**  
) **COMPANY, LLC, *dba* THE**  
) **WASHINGTON POST and**  
) **HD MEDIA COMPANY, LLC, *dba***  
) **THE CHARLESTON GAZETTE-MAIL**  
)  
)

Now come The W.P. Company, LLC, *dba* The Washington Post, and HD Media Company, LLC, *dba* Charleston Gazette-Mail, (“Media Intervenors”) by and through undersigned counsel, and hereby submit their Motion to De-Designate the Suspicious Order Reports that have been provided to Plaintiffs in this case.

In response to the Sixth Circuit Court of Appeals Opinion filed on June 20, 2019,<sup>1</sup> and subsequent pleadings, this Court asked the Drug Enforcement Administration (DEA), Plaintiffs, Defendants, and the Media Intervenors to meet and confer toward a modified Protective Order to govern the release of the ARCOS Data from 2013-2014 and the Suspicious Order Reports (R. 1845).<sup>2</sup> While the parties did not reach full agreement during the meet and confer sessions, the DEA and the Media Intervenors did agree to De-Designate DEA Suspicious Order Reports, and the DEA reduced that agreement to writing, filing it as a Proposed Agreed Order on July 26, 2019 (R. 2040-2).

Certain Defendants<sup>3</sup> objected to the Proposed Order De-Designating DEA Suspicious Order Reports and the Media Intervenors' Position Paper (R. 2080, page ID #286624), citing two reasons. The first, that the Court lacked jurisdiction to address the issue until the Sixth Circuit mandate issues, is now moot, as the mandate issued on September 6, 2019 (R. 2581). The second, that the materials "do not constitute 'judicial records' to which the Media Intervenors have any possible right of access," discounts the Sixth Circuit's determination that there was no "good cause" for a Protective Order to withhold them. In fact, absent good cause for a Protective Order, they became public records when provided to the public entities that are Plaintiffs in this case.

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<sup>1</sup>*In re Nat'l Prescrip. Opiate Litig.*, 927 F.3d 919 (6<sup>th</sup> Cir. 2019).

<sup>2</sup>The 2013-2014 ARCOS Data was released on January 14, 2020 (R. 2030). The Order clarifying the filing of sealed/redacted documents was issued on November 5, 2019 (R. 2909). The SORs are the only remaining documents being sought by Media Intervenors at this time in this litigation.

<sup>3</sup>AmerisourceBergen Drug Corporation; Anda, Inc.; Cardinal Health, Inc.; Discount Drug Mart, Inc.; CVS Rx Services, Inc. and CVS Indiana, LLC; HBC Service Company; H.D. Smith LLC, *fka* H.D. Smith Wholesale Drug Company, H.D. Smith Holdings, LLC, and H.D. Smith Holding Company; Henry Schein, Inc. and Henry Schein Medical Systems, Inc.; McKesson Corporation; Rite Aid of Maryland, Inc. *dba* Rite Aid Mid-Atlantic Customer Support Center; Walgreen Co. and Walgreen Eastern Co.; Walmart, Inc., and Prescription Supply Inc.

Nine months later, nothing has changed. Therefore, the Media Intervenors respectfully request that this Court expeditiously grant the Proposed Order De-Designating DEA Suspicious Order Reports (R. 2040-2).

Respectfully submitted,

THE LEFTON GROUP, LLC

/S/ Karen C. Lefton

KAREN C. LEFTON (0024522)  
TIMOTHY D. SMITH (0007636)  
3480 W. Market Street, Suite 304  
Akron, Ohio 44333  
330-864-2003 - office  
330-606-8299 - cell  
[Karen@theleftongroup.com](mailto:Karen@theleftongroup.com)  
[timothydalysmith@gmail.com](mailto:timothydalysmith@gmail.com)

*Attorneys for The W.P. Company, LLC, dba The  
Washington Post*

/s/Patrick C. McGinley

Patrick C. McGinley (W.Va. Bar 5620)  
Suzanne Weise (W. Va. Bar 4312)  
737 South Hills Drive  
Morgantown, West Virginia 26501  
304-552-2631 - cell  
304-292-9822 - office

*Attorneys for HD Media Company, LLC, dba The  
Charleston Gazette-Mail*

**CERTIFICATE OF SERVICE**

I certify that on April 28, 2020, a copy of the foregoing was electronically filed and served on all counsel of record for this case through the Court's electronic filing system.

/s/ Karen C. Lefton

KAREN C. LEFTON (0024522)

An Attorney for The W.P. Company, LLC